THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 17269 OF 2003

Between:

K. Samuel Raju

… Petitioner

A n d :

The Superintending Engineer (O) A.P.S.P.D.C.L.,

Guntur and another.

… Respondents

ORAL ORDER:

The petitioner initially served the APSEB as NMR in 1971. Eventually he was appointed as a Helper w.e.f. 1.5.1979. An enquiry was initiated against the petitioner alleging that he had produced a false education certificate at the time of his appointment. Without proper conduct of inquiry, by the proceedings dt 28.7.1999 the petitioner was dismissed from service. Aggrieved he filed W.P. No. 16485/99. Eventually the writ petition was disposed of by this court on 23.8.2000 setting aside the order of dismissal and remitting the matter back to the disciplinary authority to reconsider the petitioner's case while observing that for the post of Lineman no educational qualification is required and the false certificate alleged produced by the petitioner is in respect of educational qualification.

The 2nd respondent issued yet another proceedings dt 24.1.2002 dismissing the petitioner from service. Thereupon the petitioner challenged the said proceedings by way of W.P. No. 7704/02. This writ petition was disposed of on 23.4.2002 permitting the petitioner to prefer a departmental appeal under Regulation-18. The petitioner preferred an appeal. The 1st respondent rejected the appeal on 22.7.2002.

Aggrieved thereby the petitioner filed W.P.No. 1291/03. By the judgment dt 8.4.2003 the writ petition was allowed and the order of dismissal set aside. Thereupon the 2nd respondent by proceedings dt 19.5.2003 reinstated the petitioner into service and posted him as a Lineman to Operation Section, Guntur. The petitioner was again placed under suspension pending inquiry.

Claiming that he was entitled to salary for both the periods he was out of service on account of the illegal orders of removal, the petitioner made several representations. There being no response – either by way of payment of wages or by way of response to the representations, the petitioner filed the present writ petition.

On behalf of the respondents, the 2nd respondent has filed a counter affidavit. The counter affidavit substantially takes two defenses – (a) that the petitioner joined as Lineman on reinstatement without protest and without seeking wages for the period he was out of service; and (b) that the judgment of this court dt 1291/03 was silent with regard to wages to be paid to the petitioner for the two periods i.e., 28.7.1993 to 27.9.1999 and 24.1.2002 to 18.5.2003. In response to the petitioner's representations the 2nd respondent by proceedings dt 5.8.2003 had stated that the Standing Legal Advisor (Standing Counsel) has given an opinion that the judgment of this court in W.P.No. 1291/03 makes no mention of payment of wages from the date of dismissal.

The reasons given for not considering the representation of the petitioner for wages for the periods he was out of service, both in the respondent's proceedings dt 5.8.2003 and in the counter affidavit are wholly misconceived. The AP Southern Power Distribution Corporation Limited (APSPDCL) has apparently its own management and is not run by Mandamus. The petitioner was twice dismissed from service and both the dismissals were found illegal. He was consequently reinstated into service. Whether he is also entitled to salary and other perquisites during the periods he was out of service on account of the illegal orders of removal, is an aspect that has to be considered by the management of the APSPDCL. Such obligation to consider the treatment of the periods the petitioner was out of service, is an obligation that does not depend upon any direction of this court in any writ petition. It is an obligation of the management of a public sector company.

The writ petition is accordingly disposed of directing the 1st respondent to consider

and pass orders on the issue as to whether the petitioner is entitled to wages and if so in what measure for the period i.e., 28.7.1993 to 27.9.1999 and 24.1.2002 to 18.5.2003; and also to record reasons as to why the petitioner is not entitled if it is decided that the petitioner is not entitled to any wages. The 1st respondent shall pass appropriate orders in this behalf as directed above expeditiously and in any event within a period of two weeks from the date of receipt of a copy of this order. In this the respondent shall fail not.

As the response of the respondents to the several representations of the petitioner has not been satisfactory and as the respondents are seen to have abdicated their administrative responsibility to take a decision on the issue which is exclusively within the managerial domain, the writ petition is disposed of with costs in a amount of Rs.1,500/- (Rupees Fifteen Hundreds only) payable by the respondents to the petitioner, also within the period of two weeks from the date of receipt of a copy of this order.

30.01.2006 ----------

pvsn Justice G. Raghuram